

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3326 of 1995

Dated 02-03-2006

Between:

J.Balraj.

..... PETITIONER

AND

The APSRTC, rep. By its Managing Director, Mushirabad, Hyderabad. & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.3326 of 1995

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ORDER:

Questioning the action of the second respondent in reducing the pay of the petitioner from Rs.2,345/ to Rs.2,085/- without putting him on notice and in effecting recovery of the amount from his salary from the month of November, 1994 onwards, as being contrary to the award of the Labour Court in I.D.No.309 of 1987, dated 27-07-1990, and in violation of principles of natural justice, the present writ petition is filed.

Facts, to the extent necessary, are that the petitioner joined the respondent-Corporation as a Junior Clerk on 17-01-1962 and was promoted as a Senior Clerk on 10-11-1972. He was placed under suspension on 31-10-1985 and was removed from service on 26-01-1987. Aggrieved thereby, the petitioner approached the

Labour Court and by award in I.D.No.309 of 1987, dated 27-07-1990, the respondents were directed to reinstate the petitioner forthwith without back wages but with continuity of service. Two increments of the petitioner with cumulative effect was directed to be stopped. Pursuant to the award, the petitioner was reinstated into service and his pay was fixed in the 1989 Revised Pay Scales granting him the benefit of notional increments. Petitioner was transferred thereafter to work on promotion as Assistant Accountant under the control of the second respondent. While matters stood thus, the second respondent was directed to reduce the salary of the petitioner from Rs.2,345/- to Rs.2,085/-

In the counter affidavit, it is stated that the period of the petitioner's suspension from 31-10-1985 till his reinstatement could not be treated as on duty in view of the circular of the Corporation No.9/92, dated 08-09-1992, that the petitioner was not entitled for payment of increments during the said period, and that the respondents were justified in reducing his pay and in effecting recovery of the excess amount paid to him.

It is well settled that an order of suspension, pending disciplinary proceedings, remains in force till final orders are passed either imposing a punishment or holding the employee not guilty of the charges. Where a punishment is imposed on an employee, the earlier order of suspension pending enquiry merges with the final order and consequent thereto, it is the order of punishment, which is in force and an employee cannot be said to be under suspension thereafter, unless suspension has been ordered as a measure of punishment. The award of the Labour Court directing reinstatement, in effect, setting aside the order of removal would obliterate the earlier period of suspension and it is the award of the Labour Court, which is required to be given effect to. As the petitioner was required to be reinstated into service with continuity of service, the period when he was under suspension earlier must also be reckoned as included in the period of continuous service. But for the fact that the Labour Court denied the petitioner back wages, he would have been entitled for wages during the said period of suspension also. However, in view of the award of the Labour Court denying back wages to the petitioner, he would not be entitled for wages during the period of suspension other than the subsistence allowance, if any, which he had already received. In view of the award of the Labour Court directing continuity of service, the petitioner would be entitled for notional increments during the period of suspension and for fitment in the appropriate scales of pay, of course,

giving effect to the punishment imposed by the Labour Court of stoppage of two increments with cumulative effect.

In this context reference may be made to **K.Gopinath Pillai v. A.P.Transco**, wherein the Division Bench of this Court held that on reinstatement into service, there would not be any break in service and the employee will be entitled for notional fitment for calculation of future increments. Reliance placed by the respondents on the circular dated 08-09-1992 is misplaced. Firstly the circular dated 08-9-1992 is subsequent to the award of the Labour Court in I.D.No.309 of 1987, dated 27-07-1990. A subsequent circular cannot be made applicable retrospectively to an employee who has been reinstated pursuant to an award of the Labour Court earlier thereto. Even otherwise, the award of the Labour Court cannot be said set at naught by mere executive instructions and an award, which had attained finality, is binding on the parties to the dispute. The action of the respondents in seeking to reduce the petitioner's pay from Rs.2,345/- to Rs.2,085/- is patently illegal. Since the very action of the respondents in reducing the pay has been set aside, the justification or otherwise of such an order being passed in violation of principles of natural justice need not be examined.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, would submit that pursuant to the interim order passed by this Court on 24-02-1995 directing the respondents not to deduct any amount from the petitioner's salary in pursuance of the Revised Pay Scales, the petitioner was continued to be paid his earlier scale of pay of Rs.2,345/- till his subsequent retirement from service in 1998.

Respondents are directed not to reduce the petitioner's pay from Rs.2,345/- to Rs.2,085/- and not to effect recovery of the differential amount from the salary of the petitioner. Needless to state that the petitioner shall be entitled for payment of his terminal benefits on the pay of Rs.2,345/- and subsequent revisions, if any, to which he is entitled to.

The writ petition is allowed. No order as to costs.

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